

## **Basic Fiscal Law**

Basic Fiscal Law is designed as an introductory or refresher level fiscal law course that will provide an understanding of the importance of fiscal law and how it relates to your daily management duties.

Upon completion of this module, you will have an in-depth understanding of fiscal law's underlying concepts:

- Define Fiscal Law
- Describe Fiscal Law: Purpose
- Describe Fiscal Law: Time
- Describe Fiscal Law: Amount
- Describe the Antideficiency Act

You will also explore the importance of the necessary expense rule and the bona fide needs rule. Finally, you will review some actual Antideficiency Act (ADA) examples to enhance your understanding of the importance of all of the concepts.

## **Define Fiscal Law**

Fiscal law is the body of law that governs the availability and use of federal funds. Fiscal law is derived from many sources to include:

- The Constitution
- Legislative Appropriation Acts and Authorization Acts passed by Congress and signed into law by the President (United States Code (U.S.C)).
- Judicial court rulings and Comptroller General decisions of constitutional and congressional intent.

These sources form the basis of fiscal law.

## **Who Governs Fiscal Law?**

Only Congress (the Legislative Branch) has the ability to appropriate funds to be spent by the federal government to include the President (the Executive Branch).

The constitutional basis for this power is rooted in a single sentence: No money shall be drawn from the treasury, but in consequence of Appropriation made. (Appropriation clause Article I section 9)

## **Judicial Authority**

The Judicial Branch (our Courts) also has significant influence in fiscal law and identified limitations on Congressional spending power.

- Judicial Limitations on the Legislative Branch.
- An exercise of the spending power must be in pursuit of the general welfare.
- Conditions imposed on the use of federal funds must be reasonably related to the articulated goal.
- The intent of Congress to impose conditions must be authoritative and unambiguous.
- The action in question must not be prohibited by the Constitution.

## **Who Governs Fiscal Law?**

Congress can decree, either in the appropriation itself or by separate statutory provisions, what is required to make the appropriation “legally available” for any expenditure. It can for example describe:

- The purposes for which the funds may be used
- The length of time the funds may remain available for these uses.
- The maximum (or minimum) amount an agency may spend on particular elements of a program.

Under the “Separation of Powers” doctrine established by the Constitution:

- The legislative Branch makes the laws and provides the money to implement them
- The Executive Branch carries out the laws with the money Congress provides

## **Affirmative Authority**

Unlike other areas where a commander may have the authority to do anything not expressly prohibited to complete the mission, fiscal law requires the commander to have affirmative authority to use funds for a particular purpose. The Supreme Court underscored this principle when it said: “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress” *United States v. MacCollom*, 426 U.S. 317, 321 (1976).

In other words, just because you have the funds available and Congress has not expressly prohibited buying a bass boat for your unit does not mean you can do it. Instead, you must be prepared to show how Congress has authorized and appropriated funds for that kind of expenditure to be in pursuit of the Nation’s general welfare. The bass boat is probably not a legal purchase if you intend to use it for the unit’s recreational purposes (there are non-

appropriated fund for that); however, the bass boat might be a legal use of appropriated funds if you purchased it to support low-intensity warfare/special operations.

### **The Three Main Elements – Purpose, Time, and Amount**

Fiscal law's main sources are the Constitution, legislative acts, judicial rulings, and Comptroller General Decisions. This foundation provides the key elements that, as a Certifying Officer or an Accountable Official, you must ensure are met before funds are obligated.

For effective decision support, you must ensure affirmative authority exists for funds to be used. The three main elements are:

- Purpose
- Time
- Amount

Purpose is probably the most important element regarding spending and is where many fiscal violations occur. In fact, as the Comptroller General made clear more than a century ago in referring to the misapplication of appropriations. The purpose concept means using the money as intended by Congress. The Constitution gives Congress the power of the purse: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law" The Appropriations Clause (Article I, Section 9)

### **Necessary Expense Rule**

Congress provides reasonable discretion in determining how to carry out the purpose of an appropriation. 31 United States Code (U.S.C) 1301(a) does not require, nor would it be reasonably possible that every item of an expenditure be specified in the appropriated act.

To apply reasonable discretion and flexibility, the U.S. Government Accountability Office (GAO) developed the concept known as the "necessary expense rule."

The necessary expense rule consists of a three-part test. Whenever you are asked to make a decision concerning spending government funds, apply the three part test of the necessary expense doctrine.

The expenditure must:

1. Bear a logical relationship to the appropriation sought to be charged.
2. Not be prohibited by law.
3. Not be an item that falls within the scope of some other appropriation or statutory funding scheme.

When you apply the three part test of the necessary expense rule, you can justify the purpose of expenditure.

This completes the purpose element for fiscal authority. By understanding this element and the associated necessary expense rule you can avoid most fiscal law complications. However, this element is only the first of the three – Purpose, Time, and Amount elements. You need to be familiar with the other two elements, time and amount.

## **Time**

In this section we are focusing on the next element – TIME. When you complete this part of the module, you will understand the general time limits on availability of appropriated funds and the applicability of the bona fide needs rule.

### **Types of Appropriations**

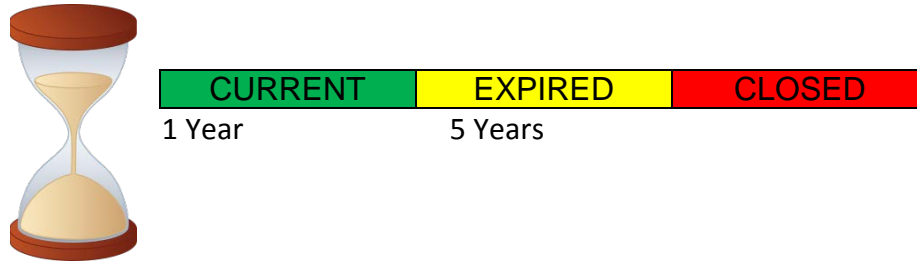
Appropriations are available for obligation for limited periods of time. To understand appropriations within the context of the time element, you need to know some basic definitions.

- Current appropriations are monies whose availability for new obligations has not yet expired under the terms of the governing appropriations act.

- Expired appropriations are monies whose availability has expired for new obligations, but which are available to adjust and liquidate previous obligations. All appropriations remain expired for five years.

- Closed (or cancelled) appropriations are monies that are no longer available for any purpose.

One way to understand definitions of TIME, as they relate to appropriations, is with the chart below.



The green bar shows funds as current and available for obligation. Funds may be obligated during this period, but are subject to appropriation rules and laws. Depending on the appropriation, the “current” period may be one year, two years, three years, or five years.

The yellow bar represents funds as expired. The basic rules for expired funds are:

- They are available for limited use up to five years after the date the funds expired
- They are not available for new obligations

After five years the agency must STOP (red bar) using these funds for any purpose. The money is now closed, also known as “canceled.” This means:

- the funds are not available for any purpose
- You cannot obligate them
- You cannot use them to adjust contracts
- The funds become miscellaneous receipts to the Treasury

If you have a legal liability related to a closed appropriation you MUST use current year funds to pay it.

On the basis of TIME (duration), there are three types of appropriations:

- Annual appropriations (also called one-year appropriations)
- Multi-year appropriations
- No-year appropriations

Annual appropriations are made for a specified fiscal year and are available for new obligations only during that fiscal year. Routine activities of the federal government are, for the most part, financed by annual appropriations.

The operations and Maintenance (O&M) and Personnel appropriations are annual appropriations.

All appropriations are presumed to be annual appropriations unless the appropriations act expressly provides otherwise.

Multiple-year appropriations are available for new obligation for a definite period in excess of one fiscal year. Apart from the extended period of availability, multiple-year appropriations are subject to the same principles applicable to annual appropriations.

Multiple-year defense appropriations include:

- Research, Development, Test, & Evaluation (RDT&E) funds (2 years).
- Procurement funds (3 years).
- Military Construction funds (5 years).

A no-year appropriation is available for new obligation without fiscal year limitation. In order for an appropriation to be a no-year appropriation, the appropriating language must expressly state so. The standard language used to make a no-year appropriation is “to remain available until expended.”

However, other language will suffice as long as its meaning is unmistakable, such as “without fiscal year limitation.” The rules relating to no-year appropriations are simple. All statutory time limits as to when the funds may be obligated and expended are removed, and the funds remain available for their original purposes until expended.

DoD Working Capital and Base Realignment and Closure (BRAC) are no-year appropriations.

Now that you understand the basic rule of TIME, as it applies to the appropriation’s availability for obligations, you now will explore the application of the bona fide needs rule.

The bona fide needs rule states that a fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made.

A common application of the rule is that an appropriation is not available for the needs of a future year. The bona fide needs rule:

- Does not preclude you from maintaining inventories at levels to avoid disruption of operations.
- Comes into play when the inventory level crosses the line from reasonable to excessive.
- Results in a judgment where you need to exercise caution.

For example, if you try to obligate funds to stockpile copier paper, when it is clear that based on current year usage your unit already has enough paper to last several month into the next fiscal year, then buying the copier paper is a violation of the bona fide needs rule. This is a judgment where you need to exercise caution.

Your prudence is especially at a premium as the fiscal year draws to a close. Organizations are in a frenzy to obligate every available dollar before the ability to obligate these dollars is lost. You must apply the bona fide needs rule or potentially be in violation of the law.

### **Bona Fide Needs Rule – Services**

Bona fide need questions frequently involve requirements that cover more than one fiscal year. In the typical situation a contract is made in one fiscal year, with performance extending into part of the following fiscal year. Congress allows the use of funds, “for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to an option to extend the period of the contract) the contract period does not exceed one year.”

The total cost of the services to be provided over the 12-month period must be reflected in the contract and that amount must be obligated when the contract is signed. Congress further authorizes 12-month contracts crossing fiscal years for leasing of “real or personal property, including maintenance of such property when contracted for as part of the lease agreement.”

### **Bona Fide Needs Rule – Material**

You might receive questions involving delivery of materials beyond the fiscal year. The default answer is you may only use your unit’s funds when a current need exists for material. However, there are perfectly legitimate situations in which an obligation may happen in one year and delivery occurs in the next fiscal year.

The basic rule of thumb: You use current year funds as long as the need exists for the current year and the time between obligation and material delivery is not excessive – the intervening time is necessary for delivery, production, or fabrication (i.e., lead-time). The bona fide needs rule means you must always apply prudence. Bona fide need means there is an existing requirement for that which is being bought with the existing available funds.

This completes your exposure to the second element of fiscal law: TIME

You should be familiar with:

- the use of funds from current, expired, and closed appropriations.

- The definition of:

- Annual appropriations
- Multi-year appropriations
- No-year appropriations
- How to apply bona fide needs rule.

## **Amount**

It is not enough to know what you can spend appropriated fund for (PURPOSE) and when you spend them (TIME). You must also know how much you have available (AMOUNT) for a particular use. This section will discuss the major concept of the “legal availability” of appropriations – restrictions relating to amount.

The “Separation of Powers” doctrine established by the Constitution allows Congress to make laws and provides money to implement them. This same doctrine gives the Executive Branch the authority to carry out the laws with funds that are provided by Congress. Under this system, Congress must have the final word as to how much money can be spent by a given agency or on a given program.

The National Defense Authorization Act is a U.S. federal law that is enacted to specify the budget and expenditures of the U.S. DoD each fiscal year. This act authorizes expenditures for the related fiscal year for military activities of the DoD, military construction, and to prescribe military personnel strength for such fiscal year and other purposes.

It is important to understand that there are specific limitations with regard to how much can be spent on a particular authorization based on the overall budget status.

Due to legal restrictions on government expenditures, it is different from spending as a private individual. For example: as an individual, you may buy a house and finance it with a mortgage for 30 years. At the time of purchase, you do not have enough money to cover the full obligation of the mortgage, so you sign the paperwork with the assumption that you will have an adequate income to cover the mortgage payments. If you are unable to make the payments, you may end up losing the house. Government agencies cannot operate this way. The main reason is Antideficiency Act (ADA).

The ADA prohibits you from involving the government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. It prohibits against over-obligating an appropriation. The ADA is the principal law designed to protect Congress’ “power of the purse.” Its importance is underscored by the fact that it is the only one of the fiscal statutes to include both civil and criminal penalties for violation.

The law which is codified primarily in Sections 1341, 1342, and 1517 of Title 31 of the U.S.C., consist of four major provisions.

### **ADA – Four Provisions**

1. An officer or employee of the United States may not make or authorized an expenditure or obligation that exceeds an appropriation or an apportionment.



2. An officer or employee of the United States may not make or authorized an expenditure or obligation in advance of an appropriation, unless authorized by law.
3. An officer or employee of the United States may not accept voluntary services or employ personal services exceeding those authorized by law except to save human life or prevent property damage.
4. An officer or employee of the United States may not make or authorized an expenditure or obligation that exceeds an apportionment or reapportionment, or in excess of the amount specified in a formal subdivision of funds in accordance with agency regulations.

### **ADA – Principles**

The fiscal principles inherent in the ADA are really quite simple. The idea is to “pay as you go” for the purposes and in the time allowed by Congress. ADA prohibits government officials from making payments – or to obligate the United States to make payments at some future time – for goods or services unless there is enough money “in the ‘bank’ to cover” the cost in full. The “bank” is the available appropriation or administrative subdivision amount provided to you through a funding document for a specific purpose.

In other words you **CANNOT**:

- Obligate your unit to spend more than has been appropriated by Congress or apportioned by Office of Management and Budget (OMB).
- Spend money until you legally get it.
- Receive services without paying for them.
- Spend more money than has been identified for your unit in a funding authorization document.

### **Summary**

In this module, we defined fiscal law, learned how it is derived, and reviewed how the different federal bodies interact in regard to fiscal law and government operations. You learned about various federal laws and how you execute appropriated funds in regards to determining purpose, time, and amount. You should be able to describe the Antideficiency Act’s (ADA’s) four provisions and understand the rules of using appropriated funds and how violations of fiscal law requirements and/or the ADA can affect an individual, organization, and the mission.